CCP, 533-5861) WITH A CERTIFIED COPY OF RESOLUTION.

EXECUTIVE SUMMARY SHEET

DATE ISSUED:

April 8, 2008

REPORT NO.:

ATTENTION:

Mayor and City Council Members

ORIGINATING DEPARTMENT: City Attorney

SUBJECT:

Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP for Legal Services in Marcus R. Abbe, et al. v. City of San Diego, USDC Case No. 05cv1629 DMS (SDPOA #2) and San Diego Police Officers' Association v. City of San Diego, Superior Court Case No. 37-

2007-00082592-CU-OE-CTL (SDPOA #7)

COUNCIL DISTRICT(S): N.A.

CONTACT/PHONE NUMBER: George F. Schaefer, Deputy City Attorney, 619/533-

5861 or Todd Bradley, 619/533-3173

REQUESTED ACTION: Approve continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP for Legal Services in Marcus R. Abbe, et al. v. City of San Diego, USDC Case No. 05cv1629 DMS (SDPOA #2) and San Diego Police Officers' Association v. City of San Diego, Superior Court Case No. 37-2007-00082592-CU-OE-CTL (SDPOA #7)

STAFF RECOMMENDATION: Adopt the resolution and authorize the Auditor to appropriate and issue an Auditor's Certificate to fund this obligation.

EXECUTIVE SUMMARY: SDPOA #2 and SDPOA #7 have been combined for billing purposes at this time.

1. Marcus R. Abbe, et al. v. City of San Diego, USDC Case No. 05cv1629 DMS (SDPOA #2)

On August 16, 2005 current and former San Diego Police Department officers filed a lawsuit against the City in the case of Marcus R. Abbe, et al. v. City of San Diego, USDC Case No. 05cv1629 DMS. The case has been consolidated by the United States District Court with a related case, Burkett v. City of San Diego, USDC Case No. 05cv1629 DMS. There are approximately 1500 Plaintiffs.

The Plaintiffs contend that their rights to compensation, including overtime pay, under the Fair Labor Standards Act have been violated by the City. The Plaintiffs are demanding \$250 million in compensation. The District Court has granted partial summary judgment in favor of the City. The Plaintiffs are in the process of appealing the summary judgment ruling and the District Court has stayed proceedings in the interim.

2. San Diego Police Officers' Association v. City of San Diego, Superior Court Case No. 37-2007-00082592-CU-OE-CTL (SDPOA #7)

After the District Court in SDPOA #2 determined that the Plaintiff police officers are subject to an exemption under the Fair Labor Standards Act ("§ 207(k) exemption") for payment of overtime, the SDPOA filed this lawsuit in State Court. The SDPOA seeks a writ of mandate for violation of the Meyer-Milias Brown Act. The SDPOA contends that the City cannot unilaterally impose such an exemption from payment of overtime.

In closed session on January 22, 2008, the Council was informed of the status of SDPOA #2 (and probable appeal) and SDPOA #7. The Council was informed of the need for additional funding and that funding would come from the Public Liability Fund.

The total amount requested for these two cases in the resolution is thus \$1 million for Latham & Watkins.

FISCAL CONSIDERATIONS: Authorize an additional \$1 million to provide the defense to the City of San Diego in SDPOA #2 Marcus R. Abbe, et al. v. City of San Diego, USDC Case No. 05cv1629 DMS and SDPOA #7 San Diego Police Officers' Association v. City of San Diego, Superior Court Case No. 37-2007-00082592-CU-OE-CTL.

<u>PREVIOUS COUNCIL and/or COMMITTEE ACTION:</u> The Council was informed in Closed Session on January 22, 2008 for the need for additional authorized funding for defense of POA #2 and POA #7. Councilmember Frye moved to authorize the additional funding which was seconded by Council President Peters. The motion passed 5 to 1 with Councilmember Hueso voting "No." Councilmembers Falconer and Atkins were absent.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N.A.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): Latham & Watkins, LLP.

George F. Schaefer Deputy City Attorney

The City of San Diego CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

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CERTIFICATE OF UNALLOTTED BALANCE ORIGINATING

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(R-2008-716)

000977

RESOLUTION NUMBER R-			
DATE OF FINAL PASSAGE			

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING ADDITIONAL EXPENDITURES FOR LEGAL SERVICES OF LATHAM & WATKINS WITH REGARD TO ONGOING LITIGATION

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to continue the retention of Latham & Watkins, LLP, for an additional amount not to exceed \$1,000,000, to provide legal services in *Marcus Abbe, et al v. City of San Diego*, USDC Case No. 05 CV 1629 and *San Diego Police Officers' Association v. City of San Diego*, Superior Court Case No. 37-2007-00082592-CU-OE-CTL.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to expend the amount not to exceed \$1,000,000 from the Public Liability Fund, solely, and exclusively for the purpose of providing funds for the above described legal services, contingent upon the City Auditor and Comptroller first furnishing one or more certificates demonstrating that the funds necessary for expenditures are, or will be, on deposit in the City Treasury.

Council considered the authorization request in Closed Session on January 22, 2008.

Councilmember Frye moved to authorize the additional funding which was seconded by Council President Peters. The motion passed 5 to 1 with Councilmember Hueso voting "No."

Councilmembers Falconer and Atkins were absent.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By: George F. Schaefer
Deputy City Attorney

GFS:gb 04/08/2008 Aud. Cert.: N/A Or.Dept:CA R-2008-716

Diego, at this meeting of	coing Resolution was passed by the Council of the City of Sa
	ELIZABETH S. MALAND City Clerk
	By Deputy City Clerk
Approved:(date)	JERRY SANDERS, Mayor
Vetoed:(date)	JERRY SANDERS, Mayor